



PUBLIC NOTICE

Federal Communications Commission
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COMMENT SOUGHT ON AT&T APPLICATION FOR REVIEW AND SANDWICH ISLES PETITION FOR RECONSIDERATION

WC Docket No. 09-133

COMMENTS DUE: December 6, 2010

REPLY COMMENTS DUE: December 21, 2010

On September 29, 2010, the Wireline Competition Bureau (Bureau) released a Declaratory Ruling in the above-referenced docket, which addressed a dispute between the National Exchange Carrier Association (NECA) and Sandwich Isles Communications, Inc. (Sandwich Isles) regarding how much of certain Sandwich Isles cable lease expenses should be included in the NECA access tariff pool.¹ On October 29, 2010, AT&T filed an application for review² and Sandwich Isles filed a petition for reconsideration³ of the Bureau's ruling. In its application, AT&T argues that under a "straightforward application of the used and useful standard, none of the Sandwich Isles lease payments should be included in its revenue requirement and thus recoverable from interstate ratepayers."⁴ AT&T also argues that none of the "equitable" factors cited in the *Bureau Order* actually supports the decision to allow Sandwich Isles to foist the costs of its new cable onto ratepayers that receive no benefits from the cable.⁵ In its petition, Sandwich Isles argues that the Bureau erred in only allowing fifty percent of the disputed expenses as part of its revenue requirement and makes a number of arguments to support its claims.⁶

¹ *Sandwich Isles Communications, Inc. Petition for Declaratory Ruling*, WC Docket No 09-133, Declaratory Ruling, (WCB Bureau Sept. 29, 2010) (*Bureau Order*).

² AT&T Inc., Application for Review, WC Docket No. 09-133 (filed Oct. 29, 2010) (AT&T Application).

³ Sandwich Isles Communications, Inc., Petition for Reconsideration, WC Docket No. 09-133 (filed Oct. 29, 2010). Sandwich Isles requested confidential treatment of its entire petition. See Letter from Dana Frix, Counsel for Sandwich Isles, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 09-133 (filed Oct. 29, 2010). On November 3, 2010, NECA waived the confidentiality of certain material that had been referenced in the Sandwich Isles petition. See Letter from Gregory Vogt, Counsel for NECA, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC docket No. 09-133 (filed Nov. 3, 2010). As a result, Sandwich Isles refiled its petition, only redacting certain confidential Sandwich Isles information. Sandwich Isles Communications, Inc., Petition for Reconsideration, WC Docket No. 09-133 (filed Nov. 3, 2010) (Sandwich Isles Petition).

⁴ AT&T Application at 9.

⁵ *Id.* at 12.

⁶ Sandwich Isles Petition at 1.

First, Sandwich Isles argues that “NECA’s spare fiber rule applies to this case,” and “[t]hose rules require NECA to accept into the NECA Pool the cost of the spare Paniolo fiber.”⁷ In addition, Sandwich Isles argues that the Bureau improperly ignored various study area waiver cases and misapplied the cited “used and useful” cases.⁸

Interested parties may file comments on the AT&T Application and/or the Sandwich Isles Petition on or before **December 6, 2010** and reply comments on or before **December 21, 2010**. Filings in this proceeding should be filed in **WC Docket No. 09-133**.⁹

All filings must be addressed to the Commission’s Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW, Suite TW-A325, Washington, DC 20554. Two courtesy copies must be delivered to Pamela Arluk, Federal Communications Commission, Wireline Competition Bureau, Pricing Policy Division, 445 12th Street, SW, Room 5-A131, Washington, DC 20554 or via e-mail at pamela.arluk@fcc.gov. One copy must also be sent to Best Copy and Printing, Inc., Portals II, 445 12th Street SW, Suite CY-B402, Washington, DC 20554, telephone 202-488-5300, facsimile 202-488-5563, or via e-mail at fcc@bcpiweb.com.

Comments may be filed using the Commission’s Electronic Comment Filing System (ECFS) or by filing paper copies.

- **Electronic Filers:** Comments may be filed electronically using the Internet by accessing the ECFS: <http://www.fcc.gov/cgb/ecfs/>. Filers should follow the instructions provided on the website for submitting comments.
 - For ECFS filers, if multiple docket or rulemaking numbers appear in the caption of this proceeding, filers must transmit one electronic copy of the comments for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to ecfs@fcc.gov and include the following words in the body of the message: get form <your email address>. A sample form and directions will be sent in response.
- **Paper Filers:** Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.
Parties are strongly encouraged to file comments electronically using the Commission’s ECFS.

⁷ *Id.* at 2.

⁸ *See id.* at 12-21.

⁹ We seek comment on AT&T’s application and Sandwich Isles’ petition, but we note that section 1.104(c) of the Commission’s rules states that in any matter where both an application for review and a petition for reconsideration are filed, “the Commission will withhold action on the application for review until final action has been taken on the petition for reconsideration.” 47 C.F.R. § 1.104(c).

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission.

- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th Street, SW, Room TW-A325, Washington, DC 20554. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. The filing hours at this location are 8 a.m. to 7 p.m.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail should be addressed to 445 12th Street, SW, Washington, DC 20554.

People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

Filings and comments are also available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW, Room CY-A257, Washington, DC 20554. They may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, SW, Room CY-B402, Washington, DC, 20554, telephone 202-488-5300, facsimile 202-488-5563, or via e-mail at fcc@bcpiweb.com.

This Public Notice establishes certain procedural requirements relating to consideration of the petition for preemption. This matter shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.¹⁰ Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one- or two-sentence description of the views and arguments presented generally is required.¹¹ Other rules pertaining to oral and written *ex parte* presentations in permit-but-disclose proceedings are set forth in section 1.1206(b) of the Commission's rules.¹²

For further information, contact Pamela Arluk of the Pricing Policy Division, Wireline Competition Bureau at (202) 418-1520, or via e-mail at pamela.arluk@fcc.gov.

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¹⁰ See 47 C.F.R. §§ 1.1200, 1.1206.

¹¹ See 47 C.F.R. § 1.1206(b).

¹² See *id.*